IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1837 OF 2005.

Govardhan Hari Patil & ors. ... Appellants.
Versus.
Mrs.Jayanti Ramdas Mhatre. ... Respondent.

Shri Dilip Bodake with Shrikant Yadav for the Appellants.
Shri Vijay Mane for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : 2nd May, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. By the impugned Judgment and order, the trial Court allowed the application made by the Respondent for custody of the minor child Swati alias Swapna Patil. The Respondent is the mother of the child. The child is handicapped as she has suffered from CP Diplegia PPD several years ago. The child was born to the Respondent from her first marriage. The husband of the Respondent died in an accident and thereafter the Respondent has remarried. The present Appellant No.1 is the uncle of the child. The Appellant No.2 is the wife of the Appellant No.1. Appellant No.3 is the paternal grand mother of the minor child. This appeal came up before this Court on 22nd December 2005. This Court heard the submissions of the Advocates appearing for the parties.

This Court held as under:

> "The minor child is physically handicapped and the Court is informed that she had suffered from CP Diplegia PPD several years ago which resulted in the present condition. She has a

limited understanding and since she has lived with the Appellant for nearly three years, she is not readily accepting of the mother. That however, cannot be conclusive of the situation as at the present. **The father has expired and the mother has a legitimate claim being her guardian. In the circumstances, I am of the view that the order of the learned trial Judge does not suffer from any error. At the same time, considering the position of the child, it is only necessary that her transition from her present place of residence to the place of her mother's house should not be abrupt or of such nature which would cause a trauma to the child.** In the circumstances, I am of the view that initially for a period of two days every week until the Court reopens after the winter recess, the mother should be allowed to take the child to her residence. The final order can be passed in this appeal immediately on the reopening. In the circumstances, there shall a direction to the effect that the Respondent shall be permitted to collect the child at 11 a.m. on 23rd December 2005 and the child shall stay with the Respondent until she is returned back to her present home at 6 p.m. on 25th December 2005. The same modalities shall be adopted between 30th December 2005 and 1st January 2006 and between

6th January 2006 and 8th January 2006."

Thus this Court has already recorded a finding that the impugned order does not suffer from any error. On the basis of the order passed by this Court on 22nd December 2005, temporary custody of the minor child was handed over to the Respondent on 23rd December 2005. The custody of the child was admittedly returned to the Appellants on 8th January 2006. On the basis of the further order passed by this Court on 10th April 2006, temporary custody of the child has been again handed over to the Respondent on 18th April 2006.

2. On a plain reading of the order passed by this Court on 22nd December 2005, it appears that the Appeal was not disposed of on that day only with a view to ensure that the child must get used to the company of the Respondent-mother. Now the child has stayed for sufficiently long time with the Respondent-mother. The learned Advocate for the Respondent on instructions of the Respondent, who is personally present in Court, states that proper care of the child will be taken by the Respondent and her husband and all needs of the minor child will be taken care of in all respects. On instructions of the Respondent, he stated that necessary steps will be taken to ensure that best possible medical treatment is made available to the child. The Advocate for the Respondent on instructions of the Respondent stated that whenever the Appellants desire to meet the

child, they will be allowed to meet the child at the residence of the Respondent provided advance intimation of the visit is given by the Appellants to the Respondent. Shri Bodake appearing for the Appellants stated that on the occasions of festivals or family function temporary custody may be handed over to the Appellants for a maximum period of three days. The learned Advocate for the Respondent on instruction of the Respondent stated that if prior intimation is given by the Appellants, the Respondent has no objection for handing over the temporary custody of the minor for a period of three days to the Appellants on the occasions of festivals and family functions. The statements made by the Respondent through her Advocate are accepted.

3. In view of the aforesaid statements and in view of the finding which is already recorded by order dated 22nd December 2005, the impugned order deserves to be confirmed.

4. Accordingly the following order is passed:

i) Appeal is dismissed with no order as to costs.

ii) Custody of the minor child which is already given to the Respondent is confirmed.

Judge.